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OFFICE OF PETITIONS

In re Application of	:
Gardell et al.	:
Application No. 09/177,700	:
Filing Date: October 23, 1998	: Decision on Petition for
Attorney Docket No.: 97-813	: Patent Term Extension
For: MULTI-LINE APPEARANCE	:
TELEPHONY VIA A COMPUTER	:
NETWORK	:

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term extension entitled "Pre-Grant Application for Patent Term Adjustment," received on March 9, 2006. The petition is being treated under 37 CFR 1.181 and 37 CFR 1.701, as a petition for patent term extension.

The petition is GRANTED.

Petitioner argues that the patent should get a patent term extension beginning on October 7, 2002, the date that the Notice of Appeal was filed and ending on November 30, 2004, the date of the decision in favor of applicants.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000

A Notice of Appeal was filed in the above-identified application on October 7, 2002. On November 30, 2004, the Board of Patent Appeals and Interferences (BPAI) remanded the application to the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a remand by a panel of the BPAI to the

Examiner, the patent to issue from the application is entitled to an extension of the patent term.¹ The period of delay in the above-identified application is the period beginning on October 7, 2002, the date that the Notice of Appeal was filed and ending on November 30, 2004, the date of the remand by a panel of the BPAI, which is a final decision in favor of the applicant. Three years after the earliest effective filing date of the application is October 23, 2001. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the first period of extension is **786-days**, the period from October 7, 2002 to November 30, 2004, including the beginning and end dates.

After mailing of this decision, the above-identified application will be forwarded to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by **786 days**

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). The Petition fee \$200 for the petition under 37 CFR 1.705(b) is not required for this petition under 37 CFR 1.181 and the fee has been refunded to petitioner's Deposit Account (07-2347).

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Revision of Patent Term Extension and Patent Term Adjustment Provisions, 78 FR 21704, 21705 (April 22, 2004), 1282 Off. Gaz. Pat. Office Notices 100 (May 18, 2004) (final rule).